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6 UNITED STATES BANKRUPTCY COURT
7 NORTHERN DISTRICT OF CALIFORNIA

8 In re

9 ANN E. ALLEN,

No. 04-11384

10 Debtor(s).
11 _____/

12 Memorandum Upon Review of Fees
13 _____

13 In this case attorneys Michael E. O’Neal and Richard L. Jare of the American Attorney Center,
14 P.C., took a retainer of \$4,000.00 to represent debtor Ann E. Allen in this Chapter 13 case. While this is
15 very much on the high side for the initial fee for representation in a Chapter 13 case, this court has no *per*
16 *se* fee limits and would not be reviewing counsel’s fees *sua sponte* except for that after the case was
17 filed and before the confirmation hearing Allen made a *pro se* appearance.

18 It is highly unusual for a debtor who has hired a lawyer to appear or file pleadings without that
19 lawyer’s assistance and participation when the debtor has paid any sort of a retainer, let alone one of
20 several thousand dollars. When the debtor requested voluntary dismissal through a new lawyer, the
21 court dismissed the case but retained jurisdiction to review counsels’ fees.

22 The court ordered counsel to file a fee application by July 30, 2004. However, the application
23 was not filed until August 4, 2004. When finally filed, it showed that counsel spent 21.1 hours on the
24 case at \$195.00 an hour and seeks \$174.00 “petition preparer fee” in addition to their hourly fees for a
25 total of \$4,288.50.

26 While counsel may have spent 21 hours or more on the case, all they accomplished was the filing

1 of the schedules and plan and completion of the 341 hearing. The real expense in a Chapter 13 case is
2 obtaining confirmation of a plan. Counsel have not justified a fee of \$4,000.00 without obtaining
3 confirmation of a plan.

4 The court has never seen a licensed attorney seek compensation of a “petition preparer fee”
5 before. Presumably, this is a staff person employed and supervised by counsel. Ordinarily, this clerical
6 expense is in the nature of overhead and is subsumed in counsel’s hourly rate. *In re Bicoastal Corp.*,
7 121 B.R. 653, 655 (Bankr.M.D.Fla. 1990). At the very least, a much greater justification must be shown
8 than counsel have demonstrated here. *Zolfo, Cooper & Co. v. Sunbeam-Oster Co., Inc.*, 50 F.3d 253,
9 263 (3rd Cir.1995).

10 At least 10 hours of the 21.1 hours billed by counsel are for services rendered after they learned
11 on June 21 that the debtor had contacted a second attorney who had advised her to dismiss the case. It
12 does not appear from the time records that counsel did anything to find out why the debtor had done this
13 or attempt to coordinate with her new counsel. There is a cryptic entry on July 9 reading “spoke to
14 representative of the state bar discussed complaint,” from which the court gleans that relations between
15 the debtor and counsel had broken down. While the court cannot automatically assume that this was
16 counsel’s fault, it is reluctant to award fees for services which do not appear to have been necessary and
17 were rendered after it was clear that relations had deteriorated to such an extent that they could not
18 render effective representation. At that point, they should have prepared a substitution of counsel for the
19 debtor to sign or filed a motion to be relieved as counsel and returned the balance of their retainer rather
20 than just go through the motions of being counsel until their retainer was exhausted.

21 After considering all of the circumstances, the court will allow counsel all of the fees sought for
22 the 11 hours they spent on the case before they learned on June 21, 2004, that the debtor had consulted
23 another counsel. The court will allow an additional four hours for services rendered after that date. The
24 rest is disallowed because of the dubious benefit of to the debtor and as a sanction for failing to comply
25 with the court’s order that a proper fee application be filed seven days before the hearing.

26 For the foregoing reasons, counsel will be allowed a fee of \$2,925.00 in this case. They shall

1 return the balance to the debtor forthwith. A separate order will be entered.

2 Dated: August 15, 2004

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Alan Jaroslovsky
U.S. Bankruptcy Judge